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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,534	03/09/2004	Frank M. Keese	025948-0158	2016

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EXAMINER
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LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/796,534

Applicant(s)

KEESE ET AL.

Examiner

Donald Loney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 102, 104, 105 and 108-170 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/30/06, 07/07/06</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 108-111,124,132,138,141-149,151,152,158,160,163 and 165-167.

Continuation of Disposition of Claims: Claims rejected are 102,104,105,112-123,125-131,133-137,139,140,150,153-157,159,161,162,164 and 168-170.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species F in the reply filed on June 13, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

2. Claims 102, 162 and 169 are objected to because of the following informalities: In claim 102, line 2, the term "to" should be inserted after "configured". Claim 162 appears drawn to a combination of a product and apparatus claim with numerous references to the toaster are recited, however, the examiner will treat the claim as a product claim comprising two belts. In claim 169, there is no antecedent basis for "the second belt". It appears this claim may have been intended to depend from claim 168 since that claim includes the second belt. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 121, 123, 128 and 131 are rejected under 35 U.S.C. 102(e) as being anticipated by Stanger et al (5931083).

Stanger discloses a toaster comprising a heating zone element 26, a belt 204 with a first plurality of flights 209 thereon per claims 121 and 128. Refer to figures 13 and 14 along with column 7, line 12 through column 8, line 31. With regards to claim 123 and 131 the bun is toasted and element 26 is stationary when contacting the bun.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 102, 112-115, 119, 120, 125-127, 129 and 133-135 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanger et al in view of Gilbert et al (4922304).

The primary reference teaches the invention substantially as recited except for the specific height of the flights per claims 112-115 and 133-135 and the second set of flights on the other surface of the belt per claims 102 and 129. Stanger et al is silent as to the heights. See the 35 U.S.C. 102 rejection above.

Gilbert et al discloses that flights of the recited height are known to be formed on belts. Gilberts height is .15-1.5mm, which is .0059-.059 inches. See figure 2 and column 2, lines 50-55.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Stanger et al to form the flights of the recited height motivated by the fact Gilbert et al teaches said height is known. One would also be motivated to form flights of a particular height needed for a particular application. With regards to the second set of flights on the belt per claims 102 and 129, Gilbert et al shows either one set of flights (figure 2) or another set on the opposite side of the belt (figure 3) are known.

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9. Claims 102, 104, 105, 112-117, 119, 120, 121, 123, 125-127, 128, 129, 131, 133-135, 137, 140, 159 and 161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finck (6035765) in view of Stanger et al and Gilbert et al.

Finck discloses a toaster comprising a stationary heater 16 for toasting a bun and a belt 12 used to convey the bun. See figure 1, column 2, line 24 through column 3, line 12 and claim 1. Finck discloses high temperature belts comprising PTFE or silicone having a textured thereon are used (column 2, lines 35-42). Finck is silent as to the belt comprising a reinforcing material with coatings on one or both sides.

Stanger et al discloses that high temperature belts, containing flights, are formed of a fiberglass or fabric coated with PTFE. See column 4, lines 6-17 and column 8, lines 12-25.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Finck to use a reinforcing center core for the belt, as taught by Stanger et al, motivated by the fact both references teach to use PTFE belts. With regards to claims 102, 112-115, 125-127, 129, 133-135, 137, 140, and 159, the second flights and size of the flights are taught to be known by Gilbert et al as discussed above in the previous rejection. With regards to claims 104, 105, 116, 117, 137, 140 and 159, Finck teaches a second belt (i.e. metal belt) can be overlaid with the high temperature belt (column 2, lines 43-46). With regards to claims 112-115, the second flights and size of the flights.

10. Claims 118, 122, 130 and 139 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finck in view of Stanger et al and Gilbert et al as applied to claims

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102, 104, 105, 112-117, 119, 120, 121, 123, 125-127, 128, 129, 131, 133-135, 137, 140, 159 and 161 above, and further in view of Miller (4530276).

The combination of the primary reference teaches the invention substantially as recited except for the toaster being vertically oriented. See the 35 U.S.C. 103 rejection above.

Miller teaches that it is known to form toaster with a vertical orientation. See the figures 1 and 2.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the primary references to orient the toaster vertically motivated by the fact Miller teaches said orientation is known for toasters.

11. Claims 154-157 and 168-170 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Finck or Stanger.

Miller teaches a vertical toaster comprising toasting surface 42 and a belt 46 and 68 used to slide the bun along the toaster platen (see figure 1 or 2). Miller teaches metal link belts, not the coated high temperature belts with flights as instantly recited.

However, both Finck and Stanger disclose belts, containing flights, of PTFE coated fabrics can be used in toasters. Finck specifically discloses overlaying a metal link belt with the PTFE belt in a toaster (column 2, lines 43-46). Refer to column 8, lines 12-25 in Stanger et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Miller to overlay the link belt with a flighted belt, as taught by Finck, motivated by the fact Finck teaches this is known in the art. With regards to



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claims 155 and 168-170, Finck teaches a second belt as described. With regards to claim 156, a sprocket 50 is shown by Finck.

12. Claims 162 and 164 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ariei (3967720) in view of Gilbert.

Ariei discloses two belts wrapped around one another as recited. Refer to figure 1. Ariei does fail to disclose the second flights on the first, or either, belt.

Gilbert et al discloses flights can be on one or both sides of a belt depending upon the particular application thereof. See figures 2 and 3.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Ariei to form flights on both sides of one of the belts, as taught Gilbert et al, motivated by the fact Gilbert et al discloses flights can be on one or both sides of a belt depending upon the particular application thereof. With regards to the apparatus limitations the examiner deems them as functional limitations which do not distinguish from the product as indicated in the objection to the claims above. With regards to the reinforcement material and coating in claim 162 and the height of the flights in claim 164, Gilbert et al discloses these limitations at column 2, lines 50-55 and column 5, lines 17-23.

***Allowable Subject Matter***

13. Claim 136 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 150 and 153 are allowed.

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15. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to teach lacing, flap and different pattern of the first and second ribs per claim 136 and 150 in combination with all the other limitations of claims 136 and 150.

***Response to Arguments***

16. Applicant's arguments with respect to claims 102, 104, 105 and 108-167 have been considered but are moot in view of the new ground(s) of rejection.

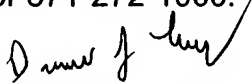
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DJL:D.Loney  
11/24/06

  
Donald Loney  
Primary Examiner  
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